Reg. No. G-2/RNP/GOA/32/2018-20

RNI No. GOAENG/2002/6410

Panaji, 23rd August, 2018 (Bhadra 1, 1940)

SERIES II No. 21

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

*Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 20 dated 16-08-2018 namely, Extraordinary dated 16-08-2018 from pages 439 to 440 regarding Notifications from Department of General Administration.*

## GOVERNMENT OF GOA

### Department of Agriculture

Directorate of Agriculture

—

**Order**

No. 8/31/2018-19/D.Agri/150

Government is pleased to depute Shri Sandeep Fol Dessai, officiating Assistant Director of Agriculture against the vacant post of General Manager at Goa State Horticulture Corporation Ltd. in the Pay Scale of PB-III Rs. 15,600-39,100+Rs. 6,600/- Grade Pay which is at level 11 of the Pay Matrix with immediate effect.

The deputation of Shri Sandeep Fol Dessai against the post of General Manager, shall initially be for a period of two years with effect from the date of taking over the charge and shall be governed by standard terms of deputation as contained in the OM No. 13/4/74-PER dated 12-02-1999 and amended from time to time.

Shri Sandeep Fol Dessai stands relieved w.e.f. 14-08-2018 (a.n.). He shall hand over the charge to the respective link officer and proceed for joining his new posting on deputation.

By order and in the name of the Governor of Goa.

*Nelson X. Figueiredo,* Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 14th August, 2018.

### Department of Information and Publicity

—

**Order**

No. DI/INF/APIO-appointment/2018/2409

In partial modification to this office order No. Di/ING/Right-Inf-Bill/05/15-16/4170 dated 27-11-2015 issued in pursuance to Clause 5 of the Right to Information Act, 2005, Assistant Information Officer (Schemes) of this Department is hereby appointed as Assistant Public Information Officer.

The above designated officer shall exercise and perform the power/functions laid down under the said Act with immediate effect.

*T. S. Sawant,* Director (Information & Publicity).

Panaji, 14th August, 2018.

◆◆◆

### Department of Labour

—

**Notification**

No. 28/3/2018-LAB/509

The following Award passed by the Labour Court-II, at Panaji-Goa on 22-06-2018 in reference No. LC-II/IT/25/2013 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*A. S. Mahatme,* Under Secretary (Labour).

Porvorim, 13th August, 2018.

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

**(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)**

Case No. Ref. LC-II/IT/25/2013

Shri Paresh M. S. Barad,
Rep. by Zuari Agro Chemicals Ltd.
Employees Union (Goa),
Reg. No. 93,
Zuarinagar-Goa ... Workman/Party-I.

V/s

M/s. Zuari Agro Chemicals Ltd.,
Jai Kisaan Bhawan,
Zuarinagar-Goa ... Employer/Party-II.

Workman/Party-I represented by Adv. Shri P. J. Kamat.

Employer/Party-II represented by Adv. Shri G. K. Sardessai.

Panaji, Dated: 22-06-2018.

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 04-07-2013, bearing No. 28/29/2013-LAB/454 referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court, Panaji-Goa, in turn assigned the present dispute for its adjudication to this Labour Court-II of Goa, vide her order dated 08-07-2013.

*"(1) Whether the action of the management of M/s. Zuari Agro Chemicals Limited, Zuarinagar-Goa, in dismissing from service Shri Paresh M.S. Barad, Junior Technician, with effect from 18-12-2012, is legal and justified?*

*(2) If not, what relief the Workman is entitled to?"*

2. On receipt of the reference, a case was registered under No. IT/25/13 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The claim statement has been filed by the Zuari Agro Chemicals Limited Employees Union (for short, "the said union") on behalf of the Workman under reference on 26-09-2013 at Exb. 4. The facts of the case, in brief as pleaded by the union are that the Employer/Party II (for short, "the Employer) is a company incorporated under the Companies Act, 1956 and is engaged in the manufacture of fertilizers. The union stated that the Workman under reference was employed on 08-04-1981 as a 'Trainee Jr. Technician' and was confirmed in the services as a Junior Technician w.e.f. 08-10-1982.

3. The union stated that it is a recognized union with the Employer and has signed various settlements with the Employer for the last more than 30 years. The union stated that it has signed the last settlement on 30-11-2009 for the period of three years effective from 01-01-2008 to 31-12-2010. The union stated that the settlement dated 30-11-2009 was terminated by them and submitted a fresh charter of demands on the management of the Employer on 10-02-2011. The union stated that since the Employer did not show any interest in commencing negotiations and/or in settling the charter of demands submitted by them, they approached the conciliation officer for intervention in the dispute. The union stated that the conciliation officer intervened in the matter and admitted the charter of demands in conciliation on 15-01-2013.

4. The union stated that in July 2000, it had espoused cause of one of its member, Mr. Dhumaskar, who was illegally terminated by the Employer and the said dismissal of Mr. Dhumaskar is pending for adjudication before the Industrial Tribunal of Goa, in reference No. IT-87/2000. The union stated that it had raised dispute before the Employer and the conciliation officer in respect of notice of change in service conditions of its members, vide notice dated 11-04-2012. The union stated that the said matter was admitted in conciliation by the Conciliation Officer and Dy. Labour Commissioner, Margao-Goa, on 03-05-2012. The union stated that the failure of conciliation in the said dispute of change in service conditions was recorded on 24-01-2013 and the report of failure of conciliation dated 01-02-2013 was sent to the Secretary (Labour), Government of Goa, Porvorim. The union stated that the said dispute of change in service condition was referred to the Industrial Tribunal for adjudication u/s 10 (1) (d) of the said Act on 24-04-2013 and is pending under reference No. IT/05/13.

5. The union stated that one Mr. B.T. Patil was working at the water treatment plant on 19-11-2011 from 16.00 hrs. in 'C' shift and was to be relieved at 00.00 hrs. by another technician scheduled for 'A' shift of 20-11-2011. The union stated that the Technician in 'A' shift of 20-11-2011 did not report for work at 00.00 hrs. and Mr. Patil

had to continue in the 'A' shift of 20-11-2011. The union stated that the 'A' shift working was from 00.00 hrs. of 20-11-2011 to 8.00 hrs. and since Mr. Patil had worked continuously for 16 hrs. Mr. Patil was required to be relived at 8 hours of 20-11-2011. The union stated that the Employer was aware of this position and was bound to make arrangement to relieve Mr. Patil at any cost at 8.00 hours on 20-11-2011. The union stated that the Employer, however, in total disregard to the mandatory provisions contained in Section 51 of the Factories Act, 1948, continued Mr. Patil up to 16.00 hours of 20-11-2011 knowing fully well that there would be no reliever for Mr. Patil at 16.00 hours as Mr. Patil was himself schedule in 'C' shift as per the shift schedule. The union stated that Mr. Patil, therefore left the plant unmanned on 20-11-2011 at 16.00 hours as he had continuously worked for 24 hours and no reliever was arranged by the Employer, which was against the law of the land. The union stated that the Employer had sufficient time at its disposal to call for other Technician to man the plant, when the Employer came to know that the reliever of Mr. Patil did not report for work at 8.00 hours of 20-11-2011 and that as per the shift schedule Mr. Patil was himself to report in 'C' shift of 20-11-2011 in the normal course. The union stated that the concerned officers of the Employer were negligent in their work and had allowed Mr. Patil to work continuously for 24 hours without making alternate arrangement to relieve Mr. Patil after 16 hours of working. The union stated that the concerned officers of the Employer, in order to safeguard their skin, instructed the workman and three others, who had already commenced their work at their respective work places, to leave the places they were working and go to the water treatment plant. The union stated that all the said workmen had declined to leave their workplaces and go to the water treatment plant.

6. The union stated that on 20-11-2011, the Workman was in 'C' shift i.e. 16.00 hours to 24.00 hours in power section of utility plant. The union stated that the Workman had reported for work at 16.00 hours on 20-11-2011 in power section and had commenced his work as usual. The union stated that on 20-11-2011, Mr. Haldankar had reported at cooling tower section at 16.00 hours as per his shift schedule fixed in advance. The union stated that Mr. Haldankar had relieved Mr. Rafael Fernandes at 16.00 hours on 20-11-2011. The union stated that the Workman was instructed to take charge of cooling tower section, where Mr. Haldankar was already working. The union stated that the regular technician in the section are aware of the working and other conditions of the plant and as such shifting of a technician from one section to other section on 'unmanned' plant is very risky to the plant as well as technician, who is asked to leave his own plant and go to the unmanned plant. The union stated that though there were four technicians, who had declined to go to water treatment plant, to work on unmanned plant, the Employer had issued show-cause notice to the Workman only as he was an active member of the union and had full support to the activities of the union. The union stated that the Workman filed his reply dated 23-11-2011 to the show cause notice issued to him, denying the allegations.

7. The union stated that thereafter an enquiry was conducted against the Workman by Mr. Prasanna C. Chawdikar, an advocate who is representing the Employer before the Industrial Tribunal on many occasions. The union stated that the Enquiry Officer did not allow the Workman to engage a lawyer of his choice to defend him in the enquiry, though the Management Representative was a trained person. The union stated that the Employer was aware of its own fault and as such did not charge Ms. Parsekar, Mr. Haldankar and Mr. Sardessai of the charges of alleged refusal to change their section. The union stated that the Employer however, issued a charge-sheet to the Workman leaving the other three technicians. The union stated that the issue of charge-sheet and conducting an enquiry against the Workman by leaving other three technician is to victimize the Workman for his trade union activities. The union submitted that the Workman was also discriminated in the matter of taking disciplinary action. The union stated that while several industrial disputes espoused by them were/are pending before conciliation officer and the industrial tribunal, the Employer issued a charge--sheet dated 25-11-2011 to the Workman and also conducted an enquiry into the same. The union stated that based on the findings of the Enquiry Officer, the Employer terminated the services of the Workman, vide its dismissal letter dated 18-12-2012.

8. The union stated that a charter of demands submitted by them to the Employer was for and on behalf of all its members including the Workman. The union stated that the Workman is also concerned with the dispute of Mr. Dhumaskar who is its member as well as in the dispute of illegal change in service conditions of its 19 members w.e.f. 11-04-2012. The union stated that the Employer did not file any application for approval/ /permission u/s 33 of the said Act, before

terminating the services of the Workman. The union therefore submitted that there is no effective termination of the service of the Workman.

9. The union challenged the said order of dismissal of the Workman by contending that the Enquiry Officer was biased and prejudiced as the Enquiry Officer has been regularly representing the Employer in the disputes in adjudication before the Hon'ble Industrial Tribunal. The union submitted that the representation sought by the Workman is not allowed. The union submitted that an advocate, who is not an employee of the Employer, is not allowed to be an Enquiry Officer nor, the Certified Standing Orders of the Employer provides for such appointment. The union submitted that neither the principles of natural justice nor Certified Standing Orders of the Employer have been followed, while conducting an enquiry. The Union submitted that the findings are not based on evidence on record. The union submitted that no opportunity to give comments on the findings of the Enquiry Officer was given to the Workman before issue of show-cause notice dated 26-11-2011, which has caused prejudice to the Workman. The union submitted that the Workman was prevented a reasonable opportunities of showing cause on the proposed punishment to file his explanation to the show cause notice dated 26-11-2012. The union submitted that the appointment of the Enquiry Officer as well as Management Representative has not been done by the competent authority. The union submitted that neither the charge-sheet nor the dismissal order have been issued by the competent authority. The union submitted that the dismissal of the Workman is in contravention of Section 33 of the I.D. Act, and is therefore non-est. The union submitted that the Ld. Enquiry Officer did not allow the Workman to tender his evidence in the enquiry as per the law and as such the findings of the Enquiry Officer is not based on proper and legal evidence. The union finally submitted that the dismissal order issued to the Workman is shockingly disproportionate to the alleged misconduct.

10. The union stated that from the date of termination of his service, the Workman is unemployed as he had already completed the age of 57 years and cannot secure any job. The union stated that the Workman tried for the job but was not successful on account of his age factor. The union therefore prayed that the Workman be reinstated in service with full back wages.

11. The Employer controverted the claim of the union by filing its written statement on 24-10-2013 at Exb.7. The Employer, as and by way of its preliminary objections, submitted that the reference filed by the union is bad in law and not maintainable and that the dispute raised by the union is not an 'industrial dispute' as defined under the I.D. Act, 1947. The Employer submitted that there is non-application of mind by the Appropriate Government, while referring the present dispute.

12. The Employer admitted that it is a company registered under the Companies Act, 1956 and carrying on manufacture and sale of fertilizers. The Employer stated that the Workman was employed with them as a Senior Assistant–Operations. The Employer stated that the Workman was issued a charge-sheet dated 25-11-2011 by alleging that the Workman was on duty on 20-11-2011 in 'C' shift in power section of utilities plant. That it is reported that Mr. B.T. Patil, who was on shift commencing from 16.00 hours to 24.00 hours, on 19-11-2011 had to continue on overtime for another 16.00 hours as Mr. Rajan Naik and Mr. A. S. Kattimani respectively, who were supposed to relieve him, did not report for duty. That since Mr. Patil had worked for 24.00 hours, he left the section and the section remained unmanned. That Mr. S.G. Sardessai, who was auxiliary in that shift in utilities plant, was not trained in water treatment section and as such could not take charge in water treatment section. That the Workman was on scheduled shift in power section and was requested by Mr. F. Pereira, Asstt. Manager-Shift to take charge in cooling tower section, so that Mr. S.G. Sardessai can take charge of power section and Mr. V. N. Haldankar could take charge of water treatment section. That the Workman refused to take charge of cooling tower section and that his refusal to take charge of cooling tower section left the section unmanned and the safety of the plant as well as personnel was endangered. That in view of this, Mr. F. Pereira had to call Mr. Naresh Naik from home to man the water treatment section. That as a result, inspite of Mr. S.G. Sardessai being auxiliary, Mr. Naresh Naik had to work in that shift on overtime. That it may be noted that also on 25-01-2011, the Workman had similarly refused to change the section in order to relieve a person on overtime while auxiliary person was available on shift. That this act of misconduct was condoned due to intervention of ZACL employees union and oral assurance was given by the Workman and the union that 'such act will not be repeated'. That however, Workman was warned in writing by letter No. IR/1228/2011/01 dated 20-06-2011.

That your above acts are acts of misconduct under the following clauses of the Certified Standing Orders of the Employer as applicable to you.

22 (I) Willful insubordination or disobedience (whether or not in combination with another) of any lawful and reasonable order of a superior.

22 (XII) Commission of any act subversive of discipline or good behavior on the premises of the establishment.

22 (XXIII) Breach of any rules or instructions given by superiors for the proper functioning or safety of the establishment.

13. The Employer stated that they had received the explanation of the Workman dated 23-11-2011 and the said explanation was not acceptable to them. The Employer stated that the acts of misconduct charged against the Workman are serious in nature and it has been decided to hold the domestic enquiry. The Employer stated that they have conducted an enquiry into the aforesaid charge-sheet issued to the Workman. The Employer stated that Shri Prasanna Chawdikar conducted an enquiry as an Enquiry Officer. The employer stated that the inquiry officer conducted inquiry in an impartial manner and every opportunity was given to the Workman to defend the charges levelled against him. The Employer stated that the Workman fully participated in the said enquiry. The Employer stated that the Enquiry Officer submitted his findings dated 14-08-2012 after appreciating the evidence on record, and the Workman was held guilty of charges levelled against him by the Inquiry Officer. The Employer stated that they considered the proceedings of the enquiry, the findings of the Enquiry Officer dated 14-08-2012 and concurred with the same and accordingly, by its letter dated 26-11-2012, the Workman was directed to show-cause as to why the punishment of dismissal from its service should not be awarded to him. The Employer stated that a copy of the findings of the Enquiry Officer was sent to the Workman along with the above referred letter. The Employer stated that the above letter addressed to the Workman returned back with a remark stating that 'the addressee has left from the residence'. The Employer stated that they have considered the past record of the Workman and did not find any extenuating circumstances. The Employer stated that considering the gravity of proved misconduct against the Workman, he was discharged from service with immediate effect, vide its letter dated 18-12-2012.

14. The Employer stated that the notice of change in service condition dated 11-04-2012 was given by way of abundant caution, though there were neither alterations in the conditions of service, nor was there any prejudice caused to the workmen by its said notice dated 11-04-2012. The Employer stated that admission of the alleged dispute if any in conciliation by the officer on the basis that there was alterations in conditions of service by the conciliation officer was without jurisdiction and consequently reference to the industrial tribunal u/s 10 (1) (d) of the pending reference under No. IT/05/2013 is also without jurisdiction. The Employer stated that representation by Mr. Prasanna C. Chawdikar as its advocate before the industrial tribunal has no bearing on the conduct of the enquiry nor on the outcome of the enquiry. The Employer stated that all that the industrial tribunal has to consider is whether the enquiry was conducted in accordance with the principles of natural justice and the findings were based on evidence on record.

15. The Employer stated that it had sent a show-cause notice at the known residence of the Workman by registered A/D. The Employer stated that the Workman did not claim the registered A/D. The Employer stated that the Workman, during this period sent letters to them requesting for extension of leave from the said address to which the registered A/D was posted. The Employer denied that the Workman is concerned with the dispute of Mr. Dhumaskar, who is a member of the union as well as in the dispute of alleged change in service conditions of 19 members of the union w.e.f. 11-04-2012. The Employer therefore submitted that before terminating the services of the Workman, they were not required to file any application for approval/permission u/s 33 of the said Act. The Employer stated that initially the representation sought by the Workman was not as per the Certified Standing Orders and therefore the said request was not allowed by the Enquiry Officer. The Employer stated that the Workman was however allowed to be represented by a person of his choice within the purview of Certified Standing Orders and accordingly, the Workman was accordingly represented by the President of his union. The Employer submitted that they have conducted the enquiry in a fair and proper manner in accordance with the principles of natural justice. The Employer submitted that in the event if this Hon'ble Court set aside the same on any of the

ground, in that event, they may be permitted to lead evidence before this Hon'ble Court to prove charges against the Workman. The Employer denied the overall case as pleaded by the union in its claim statement and prayed for the rejection of the reference.

16. Thereafter, the union filed its rejoinder on 29-11-2013 at Exb. 08. The union, by way of its Re-joinder, confirms and reiterates all its submissions, averments and statements made in its Claim Statement to be true and correct and denies all the statements, averments and submissions made by the Employer in its Written Statement, which are contrary to its Statement and averments made in its Claim Statement.

17. Based on the pleadings filed by the respective parties, this court framed the following issues at Exb. 9.

1. Whether a fair, proper and impartial enquiry was conducted against the Workman/ /Party I in accordance with the principles of natural justice?
2. Whether the charges of misconduct leveled against the Workman/Party I vide charge sheet dated 25-11-2011 have been proved to the satisfaction of this court by acceptable evidence?
3. Whether the Workman/Party I proves that the action of the Employer/Party II in dismissing him from services w.e.f. 18-12-2012 is illegal and unjustified?
4. Whether the Employer/Party II proves that the present order of reference issued by the Government of Goa is bad-in-law in view of the preliminary objections made in paras (a), (b) and (c) of the written statement?
5. Whether the Workman/Party I proves that the action of the Employer in dismissing him from services is in contravention of Sec. 33 of the I.D. Act, 1947?
6. Whether the Workman/Party I is entitled to any relief?
7. What Order? What Award?

18. My answers to the aforesaid issues are as under:

(a) Issue No. 1 : In the affirmative.
(b) Issue No. 2 : In the affirmative.
(c) Issue No. 3 : In the negative.
(d) Issue No. 4 : In the negative.
(e) Issue No. 5 : In the negative.
(f) Issue No. 6 & 7 : As per final order.

REASONS

I have heard the oral arguments of Ld. Adv. Shri P. J. Kamat, appearing for the Workman as well as Ld. Adv. Shri G. K. Sardessai, appearing for the Employer. The Workman also chose to file his synopsis of written arguments.

19. Ld. Adv. Shri P. J. Kamat, representing the Workman, during the course of his oral arguments, submitted that the Workman was appointed as a Technician in the production department of the Employer w.e.f. 08-04-1981. He submitted that since then the Workman was working with the Employer till the date of his illegal termination. He submitted that the union had pleaded that though there were four technicians, who had declined to go to water treatment plant, to work on unmanned plant, the Employer had issued show-cause notice only to the Workman, who was an active member of the union and had full support to the activities of the union. He submitted that the said action of the Employer of issuing charge-sheet to the Workman by leaving aside Mr. Parsekar, Mr. Haldankar and Mr. Sardessai of the said charges of alleged refusal to change their section only to victimize him for his trade union activities and was also discriminated in the matter of taking disciplinary action. He submitted that the Workman was not given any opportunity to comment on the findings of the Enquiry Officer given to the Workman before issue of show-cause notice dated 26-11-2012, which caused prejudiced to him. He submitted that the Workman was prevented reasonable opportunity of showing cause on the proposed punishment. He submitted that the Workman had worked in the Employer Company for 31 years with clean service records and dismissal from service is shockingly disproportionate to the misconduct alleged. He submitted that when the departmental enquiry is conducted by an outsider, who is not the disciplinary authority, there become two stages in the enquiry i.e. first stage up to the completion of the enquiry and sending the findings to the disciplinary authority and the second stage is by the disciplinary authority from furnishing a copy of the findings of the Enquiry Officer to the delinquent, calling for his comments, serving show cause notice on the proposed punishment and calling for his explanation on the same. He submitted that the principles of natural justice requires that both the aforesaid stages are to be followed by the Employer and if not, then, the enquiry is not valid as it is in breach of principles of natural justice. In support of his contentions, he relied upon two judgments of the Hon'ble Apex Court, one in the case of **Union of India v/s. H.C.**

**Goel, reported in 1950-77 Vol.2 SCLJ 1219** and another in the case of **M.D. ECIR, Hyderabad v/s. D. Karunakar, reported in 1993 (67) FLR 1230.** He also relied upon a judgment of the Hon'ble Apex Court in the case of **Union of India and Ors. v/s. Mohd. Ramzan Khan, reported in 1990 (61) FLR 736.** He submitted that in terms of clause 24 (VII) of the Certified Standing Orders of the Employer, the manager shall take into account the punishment, the gravity of misconduct, the previous records, if any, of the Workman and any other extenuating or aggravating circumstances. He submitted that the disciplinary authority took more than three months to go through the enquiry report and issue a show-cause notice dated 26-11-2012 to the Workman, which was received by him on 13-12-2012 by which the Workman was called upon to file his explanation to the findings of Enquiry Officer on or before 20-12-2012. He submitted that the Workman vide his letter dated 18-12-2012 informed the Employer that since he was working in the night shift and due to short notice, he could not consult his legal advisor and therefore prayed for two weeks' time to file his comments to the said notice dated 26-11-2012. He submitted that the Employer has however did not give any time to the Workman to file his comments on the report of the Enquiry Officer and terminated the services of the Workman on 18-12-2012 before the scheduled time given from the date of receipt of the said show cause notice. He submitted that the punishment of dismissal from service imposed upon the Workman is shockingly disproportionate and relied upon two judgments of Hon'ble Apex Court, one in the case of **Mr. Rajendra Yadav v/s. State of Madhya Pradesh and Ors., reported in 2013 1 CLR 672** and another in the case of **Anand Regional Co-operation Oil S. Union Ltd. v/s. Shaileshkumar H. Sahil, reported in 2006 III CLR 512.** He therefore submitted that the action of the Employer in dismissing the Workman be held as illegal and unjustified and direct the Workman to reinstate in service with full back wages and continuity in service.

20. Per contra, Ld. Adv. Shri. G. K. Sardessai, representing the Employer during the course of his oral arguments submitted that by order dated 03-08-2017, passed in the findings on the preliminary issue No. 1, 2 and 5, this court has already held that a fair, proper and impartial enquiry was conducted against the Workman in accordance with the principles of natural justice in respect of charge-sheet dated 25-11-2011 and that the charges of misconduct levelled against the Workman vide charge-sheet dated 25-11-2011 have been proved to the satisfaction of this court by acceptable evidence. He submitted that this court further held that the union failed to prove that the action of the employer in dismissing the Workman from its service w.e.f. 20-11-2012 is in contravention of Section 33 of the I.D. Act. He submitted that the entire action of the Employer in taking disciplinary action which led to dismissal from service of the Workman is just, fair and proper and proportionate to the proved misconduct against the Workman. In support of his oral contention, he relied upon the following three judgments of the Hon'ble Supreme Court of India.

(a) In the case of Mahindra and Mahindra Ltd. v/s. N.B. Narawde, reported in 2005 1 CLR 803.

(b) In the case of Hombe Gowda Educational Trust and Anr. v/s. State of Karnataka and Ors., reported in (2006) 1 SCC 430.

(c) In the case of M/s. Bharat Iron Works v/s. Bhagubai Balubhai Patel and Ors., reported in 1976 LAB I.C. 4.

I have carefully perused the entire records of the present case including the synopsis of written arguments filed by the union. I have also carefully considered the oral submissions advanced by the Ld. Advocates appearing for the respective parties and is of the considered opinion as under.

21. *Issue No. 1 and 2:*

By order dated 03-08-2017 passed in my findings on preliminary issue No. 1, 2 and 5, I have discussed and come to the conclusion that a fair, proper and impartial enquiry was conducted against the Workman in accordance with the principles of natural justice and that the charges of misconduct levelled against the Workman vide charge-sheet dated 25-11-2011 have been proved to the satisfaction of this court by acceptable evidence. The issue No. 1 and 2 are therefore answered in the affirmative.

22. *Issue No. 5:*

By order dated 03-08-2017 passed in my findings on preliminary issue No. 1, 2 and 5, I have discussed and come to the conclusion that the union has failed to prove that the action of the Employer in dismissing the Workman from its service w.e.f. 20-11-2012 is in contravention of Section 33 of the I.D. Act, 1947. The issue No. 5 is therefore answered in the negative.

23. *Issue No. 3:*

It appears from the pleadings of the union that it has challenged the dismissal of the Workman from the services of the Employer w.e.f. 20-11-2012

by contending to be illegal, unjustified as it is in violation of principles of natural justice, discriminatory, shockingly disproportionate to the misconduct alleged against the Workman and in violation of doctrine of equality.

24. Ld. Adv. Shri P. J. Kamat, representing the union relied upon a judgment of Hon'ble Apex Court in the case of **Union of India (supra),** the Hon'ble Apex Court in para 11 of its judgment has held as under:

> *"11. After the report is received by the Government, the Government is entitled to consider the report and the evidence led against the delinquent public servant. The Government may agree with the report or may differ wholly or partially from the conclusions recorded in the report……..if the EO makes findings, some of which are in favour of the public servant and some against him, the Government is entitled to consider the whole matter and if it hold that some or all the charges framed against the public servant are, in its opinion, prima facie establishment against him, then also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly. It would thus be seen that the object of the second notice is to enable the public servant to satisfy the Government on both the counts one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted upon him is severe."*

25. In the case of **Union of India and Ors. v/s. Mohd. Ramzan Khan,** the Hon'ble Apex Court in para 15 of its judgment held as under.

> *"15. Deletion of the second opportunity from the scheme of Article 311 (2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceedings completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncement of this Court making rules of natural justice applicable to such an inquiry are not affected by the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position."*

The principle laid down by the Hon'ble Apex Court in its respective cases have been considered in its below mentioned constitutional bench judgment.

26. In the case of **M.D., ECIR, Hyderabad (supra),** the Hon'ble Supreme Court of India, after considering the law laid down in its earlier judgments, including in the case of Mohammad Ramzan Khan (supra), in para 29 of its judgment observed as under:

> *"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."*

27. The Hon'ble Apex Court further in para 30 (v) held that *"The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is*

*not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence, to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amount to an "unnatural expansion of natural justice" which in itself is antithetical to justice……"*

28. The Hon'ble Apex Court has also laid down the procedure to be followed by Tribunals when the inquiry officer's report is not furnished to the delinquent employee in the disciplinary proceeding. It has been held that in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunal should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal comes and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

29. In the case in hand, the Workman under reference was issued a charge-sheet dated 25-11-2011 and appointed an Enquiry Officer Adv. Shri P. Chawdikar. The said Shri P. Chawdikar was not an employee of the Employer but an outsider. Shri P. Chawdikar conducted an enquiry and submitted his findings dated 14-08-2012 to the disciplinary authority. Ld. Enquiry Officer, in his findings dated 14-08-2012 held the Workman guilty of the charges of misconduct leveled against him. After receiving the findings of the Enquiry Officer, the disciplinary authority gave a show-cause notice to the Workman under reference, vide show-cause notice dated 26-11-2012 which has been returned unserved with the postal remark "address left". However, the Workman was served with a copy of the said show-cause notice dated 26-11-2012 on 13-12-2012 alongwith findings of the Enquiry Officer dated 14-08-2012. The Workman under reference requested the Employer to grant him two weeks' time to file his comments on the enquiry report and explanation to the show-cause notice as he was working in the night shifts and due to short notice he could not consult his legal advisor. The said letter of the Workman was received by the Employer on 18-12-2012. The disciplinary authority, vide his letter dated 18-12-2012 rejected the aforesaid request of the Workman for two weeks' time. The disciplinary authority dismissed the Workman from its service on the same day by his letter dated 18-12-2012 only by observing that they have concurred the findings of the Enquiry Officer and that the misconducts are serious in nature and warrant disciplinary action and that they do not find any extenuating circumstances to take lenient view.

30. As already stated herein above, while deciding the issue No. 1 and 2, this Hon'ble Court has already come to the conclusion and held that a fair and proper enquiry has been conducted against the Workman and that the charges of misconduct leveled against the Workman vide its charge-sheet dated 25-11-2011 have been proved to the satisfaction of this court by acceptable evidence. It is the contention of the Workman that he was prevented from showing cause on the proposed punishment. The evidence on record indicates that the Workman under reference was received the show-cause notice of the Employer dated 26-11-2012 alongwith findings of the Enquiry Officer only on 13-12-2012. By the said show-cause notice, the Workman was directed to show cause within seven days from the receipt of the said notice as to why the punishment of dismissal from its services should not be awarded to him. The

Employer has however, dismissed the Workman under reference w.e.f. 18-12-2012 itself i.e. on the fifth day from the issuance of the said show-cause notice without waiting for further two days. Thus, the Workman was prevented from filing his comments on the enquiry report as well as showing cause on the proposed punishment. Therefore, this court has to decide whether the Workman was prejudiced on account of denial of opportunity in filing the comments on the enquiry report as well as showing cause on the proposed punishment. As stated earlier the Workman was served with a copy of the show cause notice along with findings of the enquiry report. The Workman has pleaded and also stated on oath that the Employer, without giving him proper opportunity to file his comments as well as reply to the show-cause notice, terminated his services, vide its letter dated 18-12-2002 without waiting for seven days' time and that the said denial of reasonable opportunity has prejudiced him. Needless to state that it was not sufficient merely to allege that his defense was prejudiced, but the union was required to specify in what manner the defense of the Workman was jeopardized and spell out the prejudice that was caused to him. Thus, apart from the bare statement of the Workman, there is absolutely no material on record to show that any prejudice was caused to him due to denial of opportunity of showing cause against the proposed punishment as well as comment on the findings of the Enquiry Officer or to show that giving opportunity to file comments on the proposed punishment would have made a difference to the ultimate findings or the punishment. In view of above, the enquiry cannot be said to have been vitiated for not giving proper opportunity of showing cause against the proposed punishment.

31. The union further challenged the action of the Employer in dismissing the services of the Workman on the ground that it is shockingly disproportionate. On the contrary, the Employer submitted that the dismissal of the Workman is just, proper and proportionate to the proved misconduct and relied upon the following decisions.

32. In the case of **Mahindra and Mahindra (supra),** the Hon'ble Apex Court has held *"It is no doubt true that after introduction of Section 11-A in the I.D. Act, 1947, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion, which can be exercised under Sec. 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence or past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power u/s. 11-A of the Act and reduce the punishment".*

The principle laid down by the Hon'ble Apex Court is also applicable to the case in hand.

33. In the case of **Hombe Gowda Education Trust and Anr. (supra)** before the Hon'ble Apex Court, the Respondent No. 3, a teacher, was charge--sheeted for commission of a serious offence. He was found guilty by the Tribunal of having assaulted the Principal of the institution. Both the Tribunal as also the High Court have arrived at a concurrent finding of fact that despite grave provocation on the part of the Principal, Respondent No. 3 cannot be absolved of the charges levelled against him. It may be true that no departmental disciplinary proceeding was initiated against the Principal of the institution, but the same by itself would not be a relevant fact for imposing a minor punishment upon the respondent. It may further be true that Respondent 3 committed the offence under a grave provocation, but the Tribunal as also the High Court categorically held that the charges against him were established. The Hon'ble Apex Court, further held that *"Assaulting a superior at a workplace amounts to an act of gross indiscipline. The respondent is a teacher. Even under grave provocation, a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore cannot be said to be wholly disproportionate, so as to shock one's conscience".*

The principle laid down by the Hon'ble Apex Court in its aforesaid judgment is not applicable to the case in hand as the facts of the case before the Hon'ble Apex Court are totally different than the case in hand.

34. The evidence on record indicates that in the past, the Workman had committed similar misconduct on 25-01-2011 and the said misconduct was condoned due to the intervention of the ZACL Employees Union. It is pertinent to note that the Workman had given an oral assurance to the

Employer that such act will not be repeated and therefore he was warned in writing by the letter of the Employer dated 20-06-2011. Thus, taking into consideration the past misconduct, it cannot be said that the punishment of dismissal from service imposed upon the Workman is shockingly disproportionate. The said order of dismissal is essential from the point of maintaining the discipline in the administration. The punishment imposed upon the Workman is just, proper and proportionate to the proved misconduct.

35. The union finally challenged the dismissal of the Workman on the ground of doctrine of equality and relied upon a judgment in the case of **Rajendra Yadav (supra)** of Hon'ble Supreme Court of India. The Hon'ble Apex Court in para 12 of its judgment held as under:

> *"12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e. lesser punishment for serious offences and stringent punishment for lesser offences."*

The principle laid down by the Hon'ble Apex Court is not applicable to the case in hand as the facts of the aforesaid case before the Hon'ble Apex Court are totally different.

36. Ld. Adv. Shri P. J. Kamat, representing the union also relied upon a judgment in the case of **Anand Regional Co-Op. Oil Seedsgrowers Union Ltd. (supra)** of Hon'ble Supreme Court of India. However, the said judgment is of no assistance as the facts of the case in hand are totally different than the case before the Hon'ble Apex Court.

37. In the case in hand, a charge-sheet was issued and enquiry was conducted against the Workman only and not any other co-worker, probably, the Workman under reference was supposed to take over the charge of cooling tower section first and thereafter other co-workers has to take over the charge of respective sections. In view of above, I do not find any merits in any of the submissions made on behalf of the Workman and hence, the same are rejected. Hence, it is held that the Workman failed to prove that the action of the Employer in dismissing him from service w.e.f. 18-12-2012 is illegal and unjustified. The issue No. 3 is therefore answered in the negative.

38. *Issue No. 4:*

The Employer, as and by way of its preliminary objections, filed in its written statement submitted that the present reference is bad-in-law and hence, not maintainable, that the present dispute of the Workman is not an 'industrial dispute' as defined under the I.D. Act, 1947 and that there is non-application of mind while referring the present dispute. The burden to prove the aforesaid allegation is therefore on the Employer. The Employer has however, did not lead any material evidence in support of its aforesaid allegations. On the contrary, the evidence on record indicates that the present dispute has been raised by the Workman pertaining to his non-employment against the Employer and as such the dispute raised by the Workman is an 'industrial dispute' within the meaning of Section 2 (k) of the I.D. Act, 1947. Thus, I do not find any merits in any of the aforesaid submissions of the Employer and it is held that the Employer failed to prove that the present order of reference issued by the Government of Goa is bad-in-law in view of the preliminary objections made in para (a), (b) and (c) of its written statement. The issue No. 4 is therefore answered in the negative.

39. *Issue No. 6:*

While deciding the issue No. 3, I have discussed and come to the conclusion that the action of the Employer in dismissing the Workman from its service w.e.f. 18-12-2012 is legal and justified. The Workman is therefore not entitled to any relief. The issue No. 6 is therefore answered in the negative.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of the management of M/s. Zuari Agro Chemicals Limited, Zuarinagar-Goa, in dismissing from service Shri Paresh M.S. Barad, Junior Technician, with effect from 18-12-2012, is legal and justified.
2. The Workman, Shri Paresh Barad is not entitled to any.
3. No Order as to cost.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

**Notification**

No. 28/3/2018-LAB/510

The following Award passed by the Labour Court-II, at Panaji-Goa on 10-07-2018 in reference No. IT/19/2015 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*A. S. Mahatme,* Under Secretary (Labour).

Porvorim, 13th August, 2018.

_____

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

**(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)**

Case No. Ref. IT/19/2015

Shri Premanand Parab,
Rep. by the Gen. Secretary,
Kadamba Kamgar Union,
Panaji, Goa ... Workman/Party I.

V/s

M/s. Kadamba Transport
Corporation Ltd.,
Paraiso-de-Goa,
Alto-Porvorim-Goa ... Employer/Party II.

Workman/Party I represented by Adv. Shri A. Kundaikar.

Employer/Party II represented by Adv. Shri P. Agarwal.

Panaji: Dated: 10-07-2018.

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 18-06-2015, bearing No. 28/17/2015-Lab/617, referred the following dispute for adjudication to the Industrial Tribunal Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court thereafter assigned the present reference for its adjudication to this Labour Court-II, vide its order dated 29-11-2017.

*"(1) Whether the action of M/s. Kadamba Transport Corporation Ltd., Porvorim, Goa, in not granting the second financial up-gradation under the Modified Assured Career Progression Scheme (MACPS), to Shri Premanand R. Parab, Driver, is legal and justified?*

*(2) If not, what relief the Workman is entitled to?"*

2. On receipt of the reference, a case was registered under No. IT/19/15 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his statement of claim on 21-03-2016 at Exb-4. The facts of the case in brief as pleaded by the Workman are that he is working as Heavy Vehicle Driver and is presently posted at the Vasco Depot. He stated that he joined in the services of the Employer/ /Party II (For short "Employer") w.e.f. 15-12-1992 on daily wages. He stated that he was appointed on probation for six months w.e.f. 1-10-1993 in the pay scale of Rs. 950-20-1150-EB-25-1600. He stated that he was granted Time Bound Promotional scale in the pay scale of Rs. 4000-100-6000 w.e.f. 1-10-2005. He stated that he was dismissed from service on account of absenteeism. He stated that he raised an industrial in respect of his dismissal from service before the Assistant Labour Commissioner. He stated that he was reinstated in service with continuity without back wages vide order dated 19-1-2009 after entering into a settlement of the dispute. He stated that consequent upon the adoption of VIth Pay scales as extended to the employees of the Employer, his pay scale was fixed at Rs. 4000-100-6000 and as on 1-1-2006, his basic pay was fixed at Rs. 4000 plus dearness allowances of Rs. 2000. He stated that his revised pay band and grade pay was Rs. 5200-20,200+2400. He stated that he raised an industrial dispute pertaining to non-granting of 2nd up gradation before the ALC, Panaji. He stated that the Employer filed its reply dated 26-9-2014 before the said authority. He stated that the Employer, in para 7 of its reply, admitted that he was due for MACPS-II in October, 2013 as per his joining, however the same is differed on account of departmental inquiry pending against him. He stated that the said dispute ended in failure.

3. The Workman challenged the non--implementation of 2nd Financial Up gradation under the MACPS by contending that he is illegally deprived of the benefits of 2nd up gradation despite of his eligibility in accordance with the scheme. He submitted that the action of the Employer in refusing him for grant of 2nd up gradation is illegal and malafide. He submitted that there is no cause of action or reasonable ground to withhold the

extension of 2nd up gradation to him. He submitted that the action of the Employer is smacks of malafide and is an ex-facie instance unfair labour practice and victimization.

4. He submitted that his case is gross case wherein he has been compelled to seek sanctuary in portals of the Hon'ble Tribunal. He submitted that he is grossly discriminated against the whims and caprices of unmoving bureaucracy. The Workman therefore, prayed for passing award holding that non implementation of 2nd up gradation despite of the eligibility under the MACPS is illegal and he be granted the 2nd up gradation on completion of 20 years of service and that he be pleased to grant monetary benefits on grant of 2nd financial up gradation from the date of eligibility and other consequential benefits.

5. The Employer resisted the claim of the Workman by filing its written statement on 27-8-2016 at Exb. 5. The Employer, as and by way of its preliminary objection, submitted that there is no industrial dispute exists between the parties as defined u/s 2 (k) of the I.D. Act, 1947, that the reference has been made by the Government of Goa, without any material on record in haste and without application of mind.

6. The Employer stated that it is a Government Company registered u/s. 617 of the Companies Act, 1956. The Employer stated that it is a state transport undertaking under the purview of Motor Transport Act, 1988 and is engaged in the public passenger services in the State of Goa as well as in the neighboring States like Maharashtra and Karnataka. The Employer stated that the Workman has filed his claim statement with distorted facts. The Employer stated that its employees are not the employees of the Government of Goa. The Employer stated that it, being a separate legal entity altogether different of Government of Goa, the service benefits being granted by the Government of Goa to its employees, do not become automatically applicable to its employees'. The Employer stated that its employees are governed by its own Certified Standing Orders. The Employer stated that the service condition applicable to its employees are specified in its Certified Standing Orders as well as Memorandum of Settlement drawn between its management and its employees union from time to time. The Employer stated that any benefits which are required to be extended to its employees, are required to be extended by the resolution of its board of directors or through the settlement arrived at between its management and its workmen's union.

7. The Employer stated that the workmen represented by the union raised a dispute before the conciliation authority demanding the implementation of the recommendation of the sixth central pay commission as made applicable to the employees of the Government of Goa. The Employer stated that the dispute was taken in conciliation and an amicable settlement was arrived between both the parties and a memorandum of settlement dated 30-04-2010 u/s. 12 (3) r/w Section 18 (3) of the I.D. Act, 1947 was signed. The Employer stated that in accordance with the O.M. No. 8/7/2008--Fin(R&C) dated 15-05-2012, which is also a part of recommendations of sixth central pay commission, it has placed the proposal before the board seeking approval for applying the benefits of the said O.M. to the eligible workmen. The Employer stated that its board was pleased to approve the said proposal vide resolution No. 82/2012 subject to the clarification from the Government and thereafter the pay of the Workman including other eligible workmen were revised vide order dated 10-06-2013 in accordance with the said O.M. dated 15-05-2012. The Employer stated that the sixth pay central commission in para 6.1.15 of its report had recommended Modified Assured Career Progression Scheme (MACPS). The Employer stated that as per the resolution No. 110/11 passed by its board of directors in its 176th meeting, MACPS was adopted to its eligible employees who have completed 10-20-30 years of regular service. The said scheme was applied to its employees w.e.f. 01-08-2009 notionally and monetary benefits w.e.f. 01-01-2012.

8. The Employer stated that on the recommendation of the departmental promotion committee, its eligible employees were extended the benefits of MACPS. The Employer admitted that the Workman joined its service w.e.f. 15-12-1992 on daily wage basic and thereafter, he was appointed on probation for 6 months w.e.f. 1-10-1993. The Employer admitted that in terms of its office circular dated 21-10-2000 and on recommendation of departmental promotional committee, the Workman was granted Time Bound promotional Scale in the pay scale of Rs. 4000-100--6000 w.e.f. 1-10-2005 vide its order dated 5-1-2006. The Employer admitted that the Workman was charge sheeted on account of his unauthorized absenteeism. The Employer stated that the Workman was relieved from its service vide order dated 9-5-2008 after invoking clause 24(A) (II) of its certified standing orders. The Employer stated that the Workman challenged the said termination by raising an industrial dispute before the ALC, Panaji

Goa. The Employer admitted that during the course of conciliation proceedings, pending before the ALC, Panaji-Goa, the parties have come to an amicable settlement on 04-12-2008 and they have agreed to reinstate the Workman in service with continuity in service without any back wages. The Employer stated that, accordingly it has issued order dated 19-1-2009 reinstating the Workman with immediate effect in continuity in service without any back wages and other terminal benefits from the date of termination.

9. The Employer stated that the Workman was once again issued a charge sheet dated 23-10-2009 for driving rash and negligently causing major accident at Partagal, Canacona involving Eicher Canter Tempo bearing No. KA-20-A-4502 while on route Karwar-Canacona-Vasco on 17-8-2009 while driving its vehicle No. GA-01/X-0289 and a departmental inquiry was initiated against him. The Employer stated that in terms of para 15 of the MACPS, for an employee if the financial up gradation under MACPS is deferred and not allowed after 10 years in a grade pay, due to the reason of the employee being unfit or due to the departmental proceedings etc., this would have consequential effect on the subsequent financial up gradation which would also deferred to the extent of delay till the first financial up gradation. The Employer stated that the Workman raised an industrial dispute before the ALC, Panaji-Goa, for non-implementation of MACPS-II on completion of 20 years of service during the pendency of the departmental inquiry into the charge sheet dated 23-10-2009. The Employer stated that the charges levelled against the Workman vide charge sheet dated 23-10-2009 have been partly proved to the extent that the Workman drove the vehicle in a rash and negligent manner. The Employer stated that the Workman was, therefore, imposed a fine of Rs. 2000/- vide its order dated 15-09-2015. The Employer stated that the Workman was thereafter issued a pay fixation order dated 15-04-2016 on recommendation of departmental screening committee on completion of 20 years of service in the same grade pay and was granted 2nd up gradation in the pay band of Rs. 5200-20,200+2800 grade pay. The Employer stated that the basic of the Workman is fixed at Rs. 10,890+2800 (GP) w.e.f. 15-09-2015. The Employer stated that the benefits of the MACPS in lieu of the order dated 15-04-2016 was extended to the Workman and the said order has not been challenged by the Workman till date. The Employer therefore, submitted that the presentreference become bad and not maintainable as the 2nd up gradation under the MACP Scheme has already been granted to the Workman. The Employer denied the overall case as pleaded by the Workman and prayed for the dismissal of the present reference.

10. Based on the pleadings filed by the respective parties, the Hon'ble Industrial Tribunal--cum-Labour Court framed the following issues on 28-10-2016 at Exb. 7.

1. Whether the Party I proves that he is entitled for second financial up gradation on completion of 20 years of service in the same post in consonance with the MACP Scheme?
2. Whether the Party II proves that the reference is not maintainable as the claim of the Party I is not an industrial dispute as defined under Sec. 2(K) of the I. D. Act, 1947?
3. What relief? What Award?

11. My answers to the aforesaid issues are as under:

(a) Issue No. 1 : In the negative.
(b) Issue No. 2 : In the negative
(c) Issue No. 3 : As per final order.

REASONS

I have heard the oral arguments of Ld. Adv. Shri A. Kundaikar appearing for the Workman as well as Ld. Adv. Shri P. Agarwal appearing for the Employer.

12. Leaned Advocate Shri A. Kundaikar representing the Workman during the course of his oral arguments submitted that the Workman has raised the present dispute pertaining to non-granting of 2nd financial up gradation under the MACP Scheme. He submitted that the Workman did not lead any evidence in support of his claim. He submitted that however, the Employer has admitted certain facts in its written statement filed in the present proceedings, which ultimately proves the case of the Workman. He submitted that the Employer has admitted that he was employed as heavy vehicle driver w.e.f. 15-12-1992 on daily wage basis and thereafter, appointed on probation for six months w.e.f. 1-10-1993 in the pay scale of Rs. 950-20-1150-EB-25-1600. He stated that the Employer admitted that the Workman was granted time bound promotional scale in the pay

scale of Rs. 4000-100-6000 w.e.f. 1-10-2005. He submitted that the Workman was dismissed from service on account of his absenteeism. He submitted that the Workman was however, reinstated back in service with continuity in service and without back wages w.e.f. 19-1-2009 in terms of settlement arrived at between the parties before the ALC, Panaji-Goa. He therefore, submitted that from 1-10-1993 till 26-09-2014, the Workman had completed 20 years of service in the same post and therefore, he is entitled for the 2nd up gradation under the MACP Scheme.

13. Per contra, Ld. Advocate Shri P. Agrawal representing the Employer, during the course of oral arguments, submitted that the Workman raised the present dispute pertaining to non-granting of second financial up gradation under the MACPS to him and therefore the burden to prove that the said action of the Employer in non-granting him financial up gradation under the MACPS was upon him. He submitted that the Workman has however, failed to lead any material evidence either oral or documentary in support of his claim and as such the reference be answered in the negative. Without prejudice to the above, he submitted that the Employer has admitted that the Workman was employed by them as a heave vehicle driver w.e.f. 15-12-1992 on daily wages and that he was appointed on probation for six months w.e.f. 1-10-1993. He submitted that the Employer also admitted that the Workman was granted Time Bound Promotional scale in the pay scale of Rs. 4000-100-6000 w.e.f. 1-10-2005. He submitted that a charge-sheet dated 23-10-2009 was issued to the Workman and a departmental enquiry was conducted against the Workman. He submitted that the charges of misconduct levelled against the Workman vide charge-sheet dated 23-10-2009 has been partly proved to the extent of driving the vehicle in a rash and negligent manner and vide order dated 15-09-2015, a fine of Rs. 2000/- was imposed on the Workman. He submitted that, thereafter, the Workman was issued a pay fixation order dated 15-04-2016 on recommendation of departmental screening committee on completion of 20 years of service in the same grade pay and the Workman was granted 2nd up gradation in the pay band of Rs. 5200-20200+2800(GP) and the basic of the Workman was fixed at Rs. 10,890+2800(GP) w.e.f. 15-09-2015. He submitted that as the Workman raised an industrial dispute before the ALC, Panaji-Goa, for non-implementation of MACPS-II on completion of 20 years of service during the pendency of the departmental enquiry in respect of the charge-sheet dated 23-10-2009, his case was not considered at the relevant time.

I have carefully perused the entire records of the present case. I have also carefully considered the oral submissions advanced by the Ld. Advocates for the respective parties and is of the considered opinion as under.

14. *Issue No. 1 and 2:*

The Employer, in its written statement, filed in the present proceedings, admitted that the Workman under reference joined in its service w.e.f. 15-12-1992 on daily wages and thereafter, he was appointed on probation for six months w.e.f. 1-10-1993. The Employer admitted that in terms of its circular No. 21-11-2000 and on recommendation of the departmental promotion committee, the Workman was granted Time Bound Promotional Scale in the pay scale of Rs. 4000-100-6000 w.e.f. 1-10-2005 vide its order dated 5-1-2006. The Employer admitted that the Workman was charge sheeted for unauthorized absence and he was relieved from his services vide order dated 9-5-2008. The Employer admitted that the Workman was reinstated in service with immediate effect with continuity in service and without any back wages vide its order dated 19-1-2009 in terms of settlement arrived at between themselves and the Workman before the ALC, Panaji-Goa in a dispute raised before the said authority by the Workman.

15. Ld. Adv. Shri A. Kundaikar, appearing for the Workman submitted that in terms of the MACP Scheme, the Workman is entitled for up gradation after completion of 10, 20 and 30 years in the same grade and relied upon office memorandum dated 19-05-2009 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India. However, in the instant case, the Employer, being a corporation, the notifications issued by the Government from time to time are not applicable automatically unless and until, the same are adopted by way of resolution by its board of directors.

16. It is the case of the Workman that though he had completed 20 years of service in the post of Heavy Vehicle Driver, he was not granted the 2nd Financial up gradation under the MACPS. The Employer denied the aforesaid pleadings of the Workman in its Written Statement filed in the present proceedings. It was therefore incumbent upon the Workman to prove the aforesaid facts by leading material evidence that in terms of the provisions of MACPS applicable to Employer Corporation, he is entitled to second up gradation under the said scheme and/or the second up gradation already granted to him is not fair and proper. The Workman has however failed to do so.

17. On the contrary, the Employer contended that the Workman was issued a charge sheet dated 23-10-2009 for rash and negligent driving resulting to major road accident and a departmental inquiry was initiated. The Employer further stated that the said departmental inquiry was completed and the Workman was imposed a fine of Rs. 2000/- vide its order dated 15-9-2015. The Employer further stated that the Workman was issued pay fixation order dated 15-4-2016 on recommendations of Departmental Screening Committee on completion of 20 years of service in the same grade and he was granted 2nd up gradation in the pay band of Rs. 5200-20200-2800(GP) and the basic of the Workman was fixed at Rs. 10,890+2800(GP) with effect from 15-9-2015. However, the Employer also did not lead any material evidence either oral or documentary in support of its pleadings. Hence, in the absence of any material evidence on record, it is held that the Workman failed to prove that he was entitled for 2nd Financial upgradation on completion of 20 years of service in the said post in consonance with the MACP Scheme. It is also held that the Employer failed to prove that the reference is not maintainable as the dispute raised by the Workman is not an industrial dispute as defined u/s 2(S) of the I. D. Act, 1947. The issue No. 1 and 2 are therefore answered in the negative.

In view of above, I proceed to pass the following order:-

ORDER

1. It is held that in the absence of any evidence on record, the action of the M/s Kadamba Transport Corporation Ltd., Porvorim, Goa, in not granting the second financial up-gradation under the Modified Assured Career Progression Scheme (MACPS), to Shri Premanand Parab, Driver, is legal and justified.
2. It is further held that the Workman Shri Premanand Parab is not entitled to any relief.
3. No order as to cost.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

**Notification**

No. 28/3/2018-LAB/511

The following Award passed by the Labour Court-II, at Panaji-Goa on 15-06-2018 in reference No. IT/73/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*A. S. Mahatme,* Under Secretary (Labour).

Porvorim, 13th August, 2018.

_____

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

**(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)**

Case No. Ref. IT/73/07

Workmen,
Represented by
Gomantak Mazdoor Sangh,
Shetye Sankul, 3rd Floor,
Tisk, Ponda-Goa. ... Workman/Party I.

V/s

M/s Glenmark Laboratories
Pvt. Ltd.,
Plot No. L-82,
Verna Industrial Estate,
Verna-Goa. ... Employer/Party II.

Workman/Party-I represented by Adv. Shri S. Gaonkar.

Employer/Party-II represented by Adv. M. S. Bandodkar

Panaji, Dated: 15-06-2018.

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 29-09-2006, bearing No. 28/10/2004-LAB/720, referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the present dispute to this Labour Court-II, vide his order dated 23-06-2008.

*"(1) Whether the following 109 workmen of M/s. Glenmark Laboratories Private Limited, Verna Industrial Estate, Verna, Goa, can be*

*termed as "workmen" as defined under Clause (s) of Section (2) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?*

| Sr. No. | Name | Designation |
|---|---|---|
| 1 | 2 | 3 |
| 1. | Prakash Naik | Packer |
| 2. | Prajyokta Redkar | Packer |
| 3. | Manisha Pendse | Packer |
| 4. | Anant S. Thaker | Technician |
| 5. | Christina Dias | Technician |
| 6. | Rajendra Ghadi | Technician |
| 7. | Joaquim Fernandes | Technician |
| 8. | Dorothy Perlive | Packer |
| 9. | Rupali Naik | Packer |
| 10. | Suresh Naik | Technician |
| 11. | Baburao Supugade | Technician |
| 12. | Yogini Naik | Packer |
| 13. | Sangeeta Naik | Packer |
| 14. | Madhuri Morajkar | Packer |
| 15. | Fatima Pacheco | Packer |
| 16. | Sangeeta Bordekar | Packer |
| 17. | Smita Naik | Packer |
| 18. | Esmeralda Fernandes | Technician |
| 19. | Santosh Haldenkar | Packer |
| 20. | Ajay Pagi | Technician |
| 21. | Pundalik Gaonkar | Technician |
| 22. | Sushant Ganjikar | Technician |
| 23. | Urmila Chari | Technician |
| 24. | Prashant Agistourkar | Packer |
| 25. | Dayanand Borkar | Technician |
| 26. | Ghanshyar Salkar | Technician |
| 27. | Vinayak Dessai | Technician |
| 28. | Prakash Gawda | Technician |
| 29. | Navnath Gawas | Technician |
| 30. | Famida Aga | Packer |
| 31. | Resina Vales | Packer |
| 32. | Vishant Nagekar | Technician |
| 33. | Sunil Gaonkar | Technician |
| 34. | Pandurang Rane | Technician |
| 35. | Sarita Gaonkar | Technician |
| 36. | Sachit Jadhav | Technician |
| 37. | Nilish Borkar | Technician |
| 38. | Prashant Naik | Technician |
| 39. | Kalpana Muli | Packer |
| 40. | Lalita Naik | Packer |
| 41. | Sumita Palkar | Packer |
| 42. | Sangeeta Bhalikar | Packer |
| 43. | Sharmila Gawde | Packer |
| 44. | Sushma Bhosale | Packer |
| 45. | Meena Naik | Packer |
| 46. | Jhonifer Mascarenhas | Technician |
| 47. | Yogita Gadekar | Technician |
| 48. | Shubhangi Sawant | Packer |
| 49. | Jeevan Naik | Packer |
| 50. | Debi Prasad Sahoo | Technician |
| 51. | Laksha Naik | Technician |
| 52. | Nilima Pandit | Packer |
| 53. | Aida Dmello | Packer |
| 54. | Marina Xavier | Packer |
| 55. | Mariya Abrondes | Packer |
| 56. | Zamire Dias | Packer |
| 57. | Mega Phadte | Packer |
| 58. | Mangala Khorjuvekar | Packer |
| 59. | Sucorina Dias | Packer |
| 60. | Vinayak Vete | Technician |
| 61. | Oval Velip | Packer |
| 62. | Santoshi Mador | Packer |
| 63. | Renu Mador | Packer |
| 64. | Sidharth Rane | Technician |
| 65. | Santosh Undre | Technician |
| 66. | Hanumant Nekaige | Technician |
| 67. | Selven Andrade | Packer |
| 68. | Sanjay Gawde | Technician |
| 69. | Sulaksha Pednekar | Packer |
| 70. | Rajeshree Naik | Packer |
| 71. | Ajay Mayejar | Technician |
| 72. | Mtiram Kikorje | Technician |
| 73. | Teriza Abranches | Packer |
| 74. | Atul Naik | Technician |
| 75. | Laxman More | Technician |
| 76. | Shyamsunder Kande | Technician |
| 77. | Asha Bhatikar | Packer |
| 78. | Meenakshi Kattimani | Packer |
| 79. | Hayppo Patgaokar | Technician |
| 80. | Milagrina Lobo | Packer |
| 81. | Sunita Naik | Packer |
| 82. | Samir Kudalkar | Technician |
| 83. | Asha Dhuri | Packer |
| 84. | Darshan Gawde | Packer |
| 85. | Amini Gawde | Packer |
| 86. | Selin Fernandes | Packer |
| 87. | Nitesh Naik | Technician |
| 88. | Namita Naik | Packer |
| 89. | Suhas Gawde | Technician |
| 90. | Tulshidas Khandolkar | Technician |
| 91. | Deepa Tondal | Technician |
| 92. | Ramdas Parab | Technician |
| 93. | Mohamad Hussain | Technician |
| 94. | Immaculate D'silva | Technician |
| 95. | Mithil Naik | Technician |
| 96. | Lidya Dias | Packer |
| 97. | Jeneth Dias | Packer |
| 98. | Marry Fernandes | Packer |
| 99. | Sushma Jadhav | Packer |
| 100. | Sunita Dhuri | Packer |
| 101. | Mugda Dhuri | Packer |
| 102. | Aswin Naik | Packer |

| 1 | 2 | 3 |
|---|---|---|
| 103. | Sumitra Faldessai | Packer |
| 104. | Manisha Dessai | Packer |
| 105. | Geeta Pillari | Packer |
| 106. | Hemlata Halankar | Packer |
| 107. | Sushali Gawas | Packer |
| 108. | Sarika Chari | Packer |
| 109. | Sarika Mayekar | Packer |

*(2) If answer to the above issue No. (1) is in the affirmative, then, whether the action of the management of M/s. Glenmark Laboratories Private Limited, Verna, Goa, in refusing employment to the said 109 workmen, with effect from 19-10-2004, is legal and justified?*

*(3) If the answer to the issue No. (2) above is in the negative, what relief the Workman is entitled to?"*

2. On receipt of the reference, a case was registered under No. IT/73/07 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Gomantak Mazdoor Sangh (for short, 'the union') filed its Statement of Claim on 28-11-2007 at Exb-4 on behalf of all the 109 persons named in the order of reference (for short, 'the workmen'). The facts of the case in brief as pleaded by the union are that the Employer/Party-II (for short "Employer") is having a pharmaceutical factory at Verna Industrial Estate, Verna Goa, for manufacturing various drugs for local as well as for export. The Union stated that the Employer changed its name as "M/s. Marksans Pharma Limited" from "M/s. Glenmark Laboratories Pvt. Ltd." The Union stated that all the workmen under reference were employed by the Employer to carry out its permanent nature of work in shifts in production, maintenance, packing, dispensing, store etc. The Union stated that all the workmen under reference were independently working in gelatin, medicament, drying, printing, inspection, cartoon overprinting, blister packing, packing BP 102-I, rapid pack, packing BP 602, bulk packing, tablet granulation, tablet compression, coating, tablet inspection, stores and administration department. The Union stated that normally the female workmen were called in the first shift and general shift. The union stated that male workers used to work in all the shifts in various departments. The Union stated that all the workmen under reference were continuously forced to work for twelve hours shifts, without payment of any overtime wages. The Union stated that all the workmen under reference were also not given any facilities. The Union stated that the Employer continued to implement the several unfair labour practices such as keeping the workers for years as trainees. The Union stated that though all the workmen under reference were called as trainee, they were working independently in all the three shifts and operating various machines operation and skilled work. The Union stated that all the workmen under reference were given break in service by employing new workers in their place of work. The Union stated that due to harassment and violation of provisions of various laws, almost all the workmen of the Employer have resolved to join them. The Union stated that immediately upon joining them, its General Secretary informed the management about the said fact vide its letter dated 28-03-2004 and also submitted a charter of demands. The Union stated that upon receipt of the said letter, the management started harassing its local member and its active workers. The Union stated that as the Employer started implementing unfair labour practices, it has requested the Dy. Labour Commissioner for intervention, vide its letter dated 02-04-2004. The Union stated that the Dy. Labour Commissioner fixed several meetings, however, the Employer did not participate in the discussions/conciliation proceedings, which ended in failure.

3. The Union stated that with the help of staffs and drivers, the Employer sponsored a union. The Union stated that with the help of management, illegally and without complying the basic requirement, they forced the authorities to register another union with false information showing less number of workers, when the Employer is engaging more than 300 workforce to carry out their work in its factory. The Union stated that the management transferred its union committee members namely, Mr. Sushant Khandolkar, Technician to another department and forced him to carry out the unskilled work of loading and unloading. The Union stated that its local president of the committee, Mr. Vijay Kumar Tari was forced to sit idle in the administration department, without allotting him his normal work. The Union stated that considering the threats, harassment and unfair labour practices implemented by the Employer, all the workers have decided to hold a general body meeting on 30-05-2004 to decide the future course of action.

4. The Union stated that on 31-05-2004, the workers joined the duty in first shift, however, at around 12.00 hours the workers by name, Deepa Chari, Sunita Shirodkar, Shilpa Shetkar, Sudarshan Chingle, Nilima Naik, Sarika Naik and Ms. Suman Bordekar were called by the

management in its office and questioned by the production manager about the reason for not attending duty on overtime on 30-05-2004 i.e. the weekly off day. The union stated that the said overtime work was intentionally kept, so that, the workers should not attend the general body meeting. The Union stated that the workmen informed the management that there was a general body meeting of the union and that they went to attend the said meeting. The Union stated that upon hearing the same, the manager started threatening them that they should immediately resign from the union and that if they did not resign from the union, their services will be terminated. The Union stated that all the workers in the plant have unanimously decided to support these workers as they were illegally harass from joining the department and have decided to initiate agitation against the management in protest. The Union stated that in order to resolve the said issues amicably, its committee member went to discuss with the management, but the management refused to discuss with them and hence, workers struck the work in protest against the unilateral decision of the management. The Union stated that on noticing the same, these workers were asked to go out of the factory and accordingly all the workers were sent outside the factory gate. The Union stated that all the seven workers were issued the letter of termination on 01-06-2004. The Union stated that as the Employer continued to harass and implement the unfair labour practices and issued the termination letter to the aforesaid seven workers on 01-06-2004, all the workers have decided to protest against illegal termination of service of the said seven workmen by initiating legal strike with effect from 01-06-2004.

5. The Union stated that after the matter was ended in failure in respect of charter of demand as well as illegal termination of the said seven workmen, the union withdrawn its legal strike w.e.f. 18-10-2004. The Union stated that all the workmen under reference went to join the duties on 19-10-2004 at the factory gate, but they were not allowed to resume the duties and informed that their services have been terminated by the Employer. The Union stated that upon refusal of employment to them, it has raised an industrial dispute before the Labour Commissioner. The Union stated that the Employer contended before the said authority that the said 109 workmen in reference were the workmen employed through the Manpower Development Cell and that all the workmen under reference were appointed by publishing an advertisement followed by an interview by themselves. The Union stated that all the workmen under reference were never interviewed by the officials of the Manpower Development Cell and there was no contract signed between themselves and the Manpower Development Cell, however, only to deprive the benefits of permanency, they were paid the wages through the Manpower Development Cell by the Employer and implemented unfair labour practices.

6. The Union contended that all the workmen under reference were working independently on the permanent nature of work and hence they are workman as defined u/s 2 (s) of the I.D. Act, 1947. The Union submitted that all the workmen under reference were independently working in shifts carrying out their work of semi-skilled, skilled, work of manufacturing, dispensing, packing, maintenance and operating the machines etc. The Union contended that before refusal of their employment, the Employer did not obtain any permission from the Appropriate Government and as such their termination/retrenchment is illegal, unjustified and bad-in-law. The Union submitted that all the workmen under reference were refused the employment and new workers were employed in their place of work by the Employer and hence, the refusal of employment is illegal, unjustified and bad-in-law. The Union submitted that in spite of the legal strike, the Employer started implementing unfair labour practices and violating the provisions of I.D. Act, 1947, they started recruiting new workers in place of retrenched workmen. The Union submitted that the Employer was having more than 300 workmen on its roll and hence, chapter VB of the I.D. Act, 1947 is applicable to the Employer. The Union submitted that since the refusal of employment of all the workmen under reference, they are unemployed as they could not succeed in getting any jobs till date and are undergoing hardships due to unemployment. The Union therefore prayed to declare that all the workmen under reference be declared as 'workman' as defined u/s. 2 (s) of the I.D. Act, 1947 and their termination be further declared as illegal, improper and unjustified and the Employer be directed to reinstate all the workmen under reference with full back wages and continuity in service.

7. The Employer resisted the claim of the Union by filing its written statement on 26-02-2008 at Exb.9. The Employer, as and by way of its written statement, submitted that the entire reference is bad-in-law and not maintainable as the order of reference itself is vague, bad-in-law, contrary to the facts of the case and incapable of adjudication, that out of 109 persons mentioned in the order of

reference, not a single person was at any time its employee, that in the order of reference the Government is asking the Tribunal to adjudicate whether they are workman as defined u/s. 2 (s) of the I.D. Act, 1947, this clearly shows that there is total non-application of mind while referring the dispute for adjudication or made the reference under pressure or duress, that the persons mentioned in the reference were not its employee and that there was no employer-employee relationship between itself and the said persons and therefore the question of refusing any employment to these persons with effect from 19-10-2004 does not arise, that the reference on whose behalf is referred were deployed by the Manpower Development Cell of the Government of Goa for giving them training and that they at no point of time even paid any salary/wages to them, in fact the amount was being paid to the Manpower Development Cell with 15% administrative charges, that all the persons under reference are real employees of Government of Goa and therefore the Government of Goa should be a party to the present reference and that trainees/apprentices appointed by the Manpower Development Cell are not the workman, that the union has no locus standi to represent all the workmen under reference as they are not its members and that what is referred before this Hon'ble Court is not an industrial dispute as contemplated under the Industrial Disputes Act, 1947.

8. The Employer admitted that after complying with the required provisions of law, it has changed its name from "Glenmark Laboratories Ltd." to "Marksans Pharma Ltd.". The Employer admitted that it is a limited company registered under the Companies Act, 1956 dealing in the business of manufacturing of pharmaceutical products of various types of life saving drugs, basically for the domestic market and for export. The Employer stated that it received a letter dated 28-03-2005, purported to have been signed by Shri P. Gaonkar claiming to be the General Secretary of the union, stating that its workers have joined its union without submitting the list of the said workers. The Employer stated that the said P. Gaonkar submitted a charter of demands on the same day, which clearly shows that the union was in a hurry to submit charter of demands without verifying whether any workmen permanent or otherwise have become their member or not. The Employer stated that none of its workers was having so called affiliation with the union or that none of the member of the said union was working with its factory at Verna. The Employer stated that within two months of the sending of the letter of the charter of demand, certain workers claiming to be in allegiance to the union resorted to illegal and unjustified strike, which is still continuing. The Employer stated that these workers indulge into violence and therefore they had to approach the civil court to get the injunction against these workers and the said suit against these workers is still pending in the court. The Employer stated that some of the workers are also suspended and enquiry against them is still in progress. The Employer stated that it has its own permanent workforce. The Employer stated that however, sometimes based on the work exigencies and requirement of manpower, they used to engage contract workers. The Employer stated that they also avails the manpower services from Manpower Development Cell, Government of Goa. The Employer stated that since high technical machineries are involved in the operation and production, it also provides the training and therefore engages the trainee technicians. The Employer stated that all the persons mentioned in the order of reference are engaged through the Manpower Development Cell. The Employer stated that immediately after allegedly joining the union, some of the persons at the behest and instigation of the said union leader, started sabotaging the lifesaving drugs by mixing the different products while packaging the said medicines. The Employer stated that some of those trainee technicians, who were engaged for specific period and if their performance was not satisfactory, the service/ /contract of such trainees can be dispensed with before the end of the period specified in the contract/letter and such termination of the trainee contract, cannot be an industrial dispute. The Employer stated that since such act on the part of the said persons was dangerous, detrimental and criminal act during the training period itself, the management therefore came to the conclusion that there was no point in continuing training and training contract of seven persons were terminated w.e.f. 31-05-2004. The Employer stated that as they refused to accept the said letters on 01-06-2004, they sent those letters by registered A/D. The Employer stated that though they were not entitled to, they were sent earned stipend amount, retrenchment compensation, notice pay and other dues by registered A/D. The Employer stated that having regards to the gravity of situation and other illegal activities carried out by the persons particularly in sabotaging the lifesaving drugs, it was not possible for them to continue them in the premises as they lost the confidence in those trainees. The Employer stated that further they

came to the bonafide conclusion that their continuation in the factory premises would be further detrimental to the smooth functioning of the plant. The Employer stated that in any event, the trainees had no lien over the employment. The Employer stated that the entire action on the part of the management was bonafide and as per the agreement entered into between themselves and these persons. The Employer stated that though the trainee technicians were not entitled, they were paid/offered notice pay and retrenchment compensation in accordance with Section 25-F of the I.D. Act, 1947. The Employer stated that immediately on 31-05-2004 itself after realizing that the management has discontinued the training period of those seven persons, at the instigation of the union leader and some of trainee technician and workers, other workers, trainees and persons engaged under Manpower Development Cell started non-co-operation and went on illegal and unjustified strike from 31-05-2004 at about 1.30 p.m. onwards without notice. The Employer stated that the said illegal and unjustified strike severely affected its production. The Employer stated that before resorting to strike, both persons removed the important and critical parts and deliberately hidden those parts with malafide intentions and for sabotaging the machinery, so that, its production should be hampered and it should not complete the work orders, thereby leading in deep trouble. The Employer stated that though the management tried to convince some of the persons, there was no sign of improvement by these persons. The Employer stated that even some of the persons threatened of dire consequences to the other workmen, who were attending the work and who were not following the instructions or not associating with these persons. The Employer stated that the Union initially raised the dispute before the Additional Labour Commissioner, for alleged refusal of employment of 163 persons, subsequently it was changed to 114 persons and finally it came to 54 persons and the said reference is pending before this Hon'ble Tribunal. The Employer stated that these persons whose names are mentioned in the present reference, after confirmation and satisfying that those are not its employees, were dropped and omitted in earlier reference. However, surprisingly included in the present reference. The Employer stated that since the workers resorted to strike, which continued for some time, it has informed the Manpower Development Cell that it would not be able to give them training any further as their conduct and attitude as trainees during the period was such that it seem that they did not want to take any training in its establishment. The Employer stated that as per its knowledge available, the said cell is under the control and supervision of the Labour Commissioner, Government of Goa and therefore he should be made as an additional party to the present reference for proper adjudication. The Employer stated that whenever any person requested them for availing the training, they used to impart the training to these persons and after satisfactory completion of training, if vacancy exists, it absorbed them in regular employment and if no vacancy exists in the particular area, than there was no option to them but to discontinue the training and these trainees have no lien on the employment with them. The Employer denied the overall case as pleaded by the Union and prayed for dismissal of the present reference.

9. Thereafter, the union filed its re-joinder on 31-03-2008 at Exb. 10. The union, by way of its Re-joinder, confirms and reiterates all the submissions and averments made by them in its claim statement to be true and correct and denies all the statements and averments made by the Employer in the written statement which are contrary to the statements and averments made by them. The Union stated that on perusal of the contents of the written statement, it is confirmed that the Employer is carrying out its entire production from the workmen by treating them as so called trainees or apprentices and that the said admission on the part of the Employer amounts to admission of an unfair labour practices as enumerated in fifth schedule of the I.D. Act, 1947. The Union stated that the nature of duties and work performed by the apprentices and trainees are clearly different that of the regular workman. The Union stated that under the provisions of Apprentices Act, 1961, the apprentice can be engaged only on the designated trade with the contract of apprenticeship and that such apprentice can be engaged only with the ratio with the permanent workmen.

10. Based on the pleadings filed by the respective parties, this court framed certain issues on 01-07-2008. The said issues were up-dated by order dated 22-09-2008.

1. *Whether the Party I/workmen proves that all the 109 persons named in the present order of reference are the "workmen" of Party II/ Employer as defined under Section 2 (s) of the Industrial Disputes Act, 1947?*

1-A. *Whether the Party I/workmen proves that there exists any employer-employee relationship between the 109 persons mentioned in the order of reference and the Party II/Employer?*

2. *Whether the Party I/workmen proves that the action of the management of Party II/ /Employer in refusing employment to the said 109 persons named in the order of reference w.e.f. 19-10-2004 is illegal and unjustified?*

3. *Whether the Party II/Employer proves that the present reference is bad in law as alleged by the Employer/Party II in para "a", "b", "e", "f" and "h" of their written statement?*

3-A. *Whether the Employer/Party II proves that whether the Gomantak Mazdoor Sangh has no locus standi to represent all or any of the workers in the reference?*

4. *Whether the Party I proves that all the 109 persons named I the present order of reference are entitled for a relief?*

5. *What Award?*

11. My answers to the aforesaid issues are as under:

(a) Issue No. 1 : Does not arise.
(b) Issue No. 2 : Does not arise.
(c) Issue No. 3 : In the affirmative.
(d) Issue No. 3-A : In the affirmative.
(e) Issue No. 4 : Does not arise.
(f) Issue No. 5 : As per final order.

REASONS:

I have heard the oral arguments of Ld. Adv. Shri S. Gaonkar, appearing for the union as well as Ld. Adv. Shri M. S. Bandodkar, appearing for the Employer. Ld. Advocates appearing for the respective parties also chose to file the synopsis of written arguments respectively.

12. Ld. Adv. Shri S. Gaonkar, representing the union, during the course of his oral arguments, submitted that the Employer is a company engaged in the business of manufacturing of pharmaceuticals products of various types of lifesaving drugs, basically for the domestic market and for export. He submitted that the workers engaged by the Employer joined the union on account of several problems faced by them. He submitted that the Employer started terminating the services of the union members which led to a strike by the workers from 01-06-2004 to 18-10-2004. He submitted that the workers withdrew their strike w.e.f. 18-10-2004 and reported to work on 19-10-2004. He submitted that the Employer has however refused to allow the workers to report for their duties and resume the work. He submitted that the Employer contended that all the persons named in the present order of reference were deployed by the Manpower Development Cell of the Government of Goa for giving them training and that they have not paid any salary/wages to them at any point of time and as such neither all the persons named in the order of reference are workman as defined u/s. 2 (s) of the I.D. Act, 1947 nor there exists an employer-employee relationship between the Employer and the said workers. He submitted that however, there is no averment in the entire written statement that these workers carried out any duties, which were of managerial, administrative or supervisory in nature and therefore they are not covered u/s 2 (s) of the I.D. Act, 1947. He submitted that the Employer has never denied that these workers were employed either as packers or as technicians in the establishment. He submitted that even otherwise, the Party I has pleaded and also led evidence about their nature of duties by stating that they carried out permanent nature of work in production, maintenance, packing, dispensing in the factory and that they were independently working in shifts and carrying out the work of semi-skilled, skilled work of manufacturing, dispensing, packing, maintenance and operating the machines. He therefore submitted that all the persons named in the order of reference were performing the work of semi-skilled or skilled in nature and as such clearly cover under the definition of the workman as defined u/s. 2 (s) of the I.D. Act, 1947 and relied upon a judgment of the Hon'ble Apex Court in the case of **Trambak Rubber Industries Ltd. v/s. Nashik Workers Union reported in 2003 (6) SCC 416.** He submitted that the Employer challenged the employer-employee relationship between themselves and all the 109 persons named in the order of reference. He submitted that the Employer did not deny that these workers were working with them in their factory. He submitted that upon careful perusal of clause No. 5 and 6 of the circular (Exb.W/3-colly), it is clear that the chairman of the M.D.C. is advised to have required agreement and understanding with the industries for conducting specific training programmes required by any particular industry or group of industry and that the beneficiaries to be trained under this programme shall invariably enter into a contract in the performa as prescribed and the Commissioner of Labour and the State Apprenticeship advisor shall register the said contract under the Apprenticeship Act, 1961. The Employer has however, failed to produce on record any such agreement and understanding and also a contract registered under the Apprenticeship Act, 1961 of the said 109 persons. He submitted that the aforesaid fact makes it clear that all the persons

named in the order of reference were never employed through the MDC. He submitted that none of the memorandum at Exb.78-colly bears the names of any of the workers mentioned in the order of reference. This clearly shows that all the persons named in the order of reference were never issued any memorandum or letter by the MDC to show that they were actually under training. He submitted that neither any official receipt have been produced by the MDC nor is the attendance list by the Employer and the signatures appearing on the letters cannot be assumed of officials of MDC without the seal of the same. In support of his contention, he relied upon two judgments of the Hon'ble Apex Court, one in the case of Workman of **Nilgiri Co-operative Marketing Society v/s. State of Tamil Nadu, reported in 2004 (3) SCC 514** and another in the case of **Hussainbhai v/s. Alath Factory Tezhilali Union, reported in 1978 (4) SCC 257.** He submitted that the Employer, in para 9 of its written statement, submitted that the workers sabotaged the machinery and affected the production of the Company. He therefore submitted that if any workman commits any misconduct, then it must conduct a domestic enquiry and take action in terms of law. He submitted that in the instant case, the discharge was punitive in nature. He submitted that it is settled law that if the termination is punitive than it amounts to dismissal and therefore an enquiry must be conducted and relied upon a judgment of Hon'ble Apex Court in the case of **Gujrat Steel Tubes Ltd. v/s. Mazdoor Sabha, reported in 1980 (2) SCC 513.** He therefore submitted that the termination of services of all the workmen by the Employer by way of punitive discharge is therefore illegal and unjustified. He submitted that the Employer alleged that the union has no locus standi to espouse the present dispute and relied upon a judgment of Hon'ble High Court of Calcutta in the case of **Deepak Industries Ltd. v/s. State of West Bengal, reported in 1975 (1) LLJ 293.** He submitted that the law laid down by the Hon'ble High Court of Calcutta is erroneous and relied upon a judgment of Hon'ble High Court of Bombay in the case of **Maharashtra General Kamgar Union v/s. Haldyn Glass Works, reported in 2005 (1) CLR 668.** He submitted that since after the termination of services of all the workmen under reference, they are unemployed till date and hence, they are entitled for reinstatement with full back wages and continuity in service and relied upon a judgment of Hon'ble Apex Court in the case of **Deepali Gundu Survase v/s. Kranti Junior Adhyapak, reported in 2013 (10) SCC 324.**

13. Per contra, Ld. Adv. Shri M.S. Bandodkar, representing the Employer, during the course of his oral arguments, submitted that the union has no locus standi to espouse the present dispute as the union has failed to prove the membership of all the persons named in the order of reference as well as no authorization or resolutions has been produced by the union and relied upon a judgment of Hon'ble High Court of Calcutta in the case of **Deepak Industries Ltd. v/s. State of West Bengal, reported in 1975 (1) LLJ 293.** He submitted that the Employer challenged that all the persons named in the order of reference are not the workman as defined u/s 2 (s) of the I.D. Act, 1947 and that there does not exist any employer--employee relationship between themselves and all the persons named in the order of reference. He submitted that Mr. Puti Gaonkar, the General Secretary of the union has however, not produced any document to show that all the persons named in the present order of reference were working with the Employer on the designation mentioned by him and their date of joining. He submitted that neither any appointment letter nor wage register nor ESI or PF document were produced which could remotely prove that there exist an employer--employee relationship between the Employer and the said persons. He further submitted that none of the persons concerned in the reference have been examined by the union to prove the employer--employee relationship. He submitted that on the contrary, the Employer has examined its Sr. Manager Engineering and Projects, Mr. Walter Gonsalves has clearly deposed that there exist no employer-employee relationship between all the persons named in the order of reference and the Employer and that they were deployed by the Manpower Development Cell of the Government of Goa for giving them training and that they were paid stipend. He submitted that since the burden to prove the issue No. 1, 1-A, 2 and 4 is on the union and that the said burden has not been proved by the union and hence the reference be answered in the negative. He submitted that neither the Employer has terminated the services of all the said 109 persons named in the order of reference nor refused employment to the said 109 persons named in the order of reference. In support of his oral contention, he relied upon the following judgments:

(a) In the case of H. N. Rajappan S/o. Narayanan v/s. The Presiding Officer, Labour Office, Kannur & Ors., reported in 2013 LLR 993 of the Hon'ble High Court of Kerela.

(b) In the case of Mallikarujan S/o. Basawanthappa Ambekar & Ors. v/s. Associated Cement Co. Ltd., Gulbarga & Ors., reported in 2015 LLR of the Hon'ble High Court of Karnataka.

(c) In the case of Nilesh Shivaji Sapkar, Pune v/s. State of Maharashtra through Secretary, Labour Department Mantralya, Mumbai and Ors., reported in 2015 LLR 733 of the Hon'ble High Court of Bombay.

(d) In the case of Dharam Pal v/s. Management of J. Roy & Bros. & Anr., reported in 2013 (1) LLN 470 of the Hon'ble High Court of Delhi.

(e) In the case of Ravi N. Tikoo v/s. Deputy Commissioner (S.W.) & Ors., reported in 2006 LLR 496 of the Hon'ble High Court of Delhi.

(f) In the case of Mahindra and Mahindra v/s. The Presiding Officer and Anr., reported in 2012 (4) LLN 506 of the Hon'ble High Court of Punjab.

(g) In the case of R. Kartik Ramachandran v/s. Presiding Officer, Labour Court & Anr., reported in 2006 LLR 223 of the Hon'ble High Court of Delhi.

(h) In the case of U.P. Avas Evam Vikas Parishad v/s. Kanak & Anr., reported in 2003 LLR 1 of the Hon'ble Supreme Court of India.

(i) In the case of workmen, rep. by Gomantak Mazdoor Sangh v/s. Airport Authority of India, reported in 2017 LLR 928 of the Hon'ble High Court of Bombay.

(j) In the case of Shambhu and Anr. v/s. M/s. Sugan Drycleaners and Anr., reported in 2017 LLR 909 of the Hon'ble High Court of Delhi.

(k) In the case of Rampat v/s. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and Anr., reported in 2013 LLR 323 of the Hon'ble High Court of Punjab and Haryana.

(l) In the case of Prem v/s. Chirag Boutique, reported in 2008 (5) LLN 245 of the Hon'ble High Court of Judicature of Delhi.

(m) In the case of Automobile Association of Upper India v/s. The P.O., Labour Court II & Anr., reported in 2006 LLR 851 of the Hon'ble High Court of Delhi.

(n) In the case of Management of M/s. Otis Elevator Co. (India) Ltd. v/s. Presiding Officer, Industrial Tribunal-III & Anr., reported in 2003 LLR 701 of the Hon'ble High Court of Delhi.

(o) In the case of Kalyani Sharp India Ltd. v/s. Labour Court No.1, Gwalior and Anr., reported in 2001 (2) LLN 853 of the Hon'ble Supreme Court of India.

(p) In the case of Escorts Limited v/s. Presiding Officer and Anr., reported in 1997 (11) SCC 521 of the Hon'ble Supreme Court of India.

(q) In the case of Maharashtra General Kamgar Union v/s. J.K. Chemicals Limited and Ors., reported in 2004 (2) LLN 931 of the Hon'ble High Court of Bombay.

(r) In the case of Dyes and Chemical Worker Union, Mumbai v/s. Bombay Oil Industries Ltd. and Anr., reported in 2001 (1) LLJ 1252 of the Hon'ble High Court of Bombay.

(s) In the case of M/s. Bharati Iron Works v/s. Bhaqubhai Balubhai Patel and Ors., reported in AIR 1976 SC 98 of the Hon'ble Supreme Court of India.

(t) In the case of Uttar Pradesh State Electricity Board and Shiv Mohan Singh and Anr., reported in 2004 (4) LLN 806 of the Hon'ble Supreme Court of India.

(u) In the case of Haryana Power Generation Corporation Limited and Ors., v/s. Harkesh Chand and Ors., reported in 2013 (2) LLN 43 of the Hon'ble Supreme Court of India.

I have carefully perused the entire records of the present case including the synopsis of written arguments filed by the respective parties. I have also carefully considered the submissions advanced by the Ld. Advocates for the respective parties.

14. *Issue No. 3 and 3(A):*

I am deciding issue No. 3 and 3-A simultaneously as both the issues are co-related to each other. I am deciding the said issue No. 3 and 3-A prior to the issue No. 1, 1-A and 2 as both the said issues goes to the root jurisdiction of this court.

15. The Employer contended that the Union has no locus standi to represent all the 109 persons named in the order of reference as all the said 109 persons named in the order of reference are not members of the said union namely Gomantak Mazdoor Sangh and the Employer is strongly disputing the authority of the said union to represent the said persons. The burden to prove the fact that the union is having locus standi to represent all the said persons named in the order of reference is on the union.

16. The objection raised by the Employer that the dispute which had been referred is not an Industrial Dispute as the Union which has raised the dispute pertaining to the non-employment of the Workman has no locus standi to do so. The Hon'ble High Court of Bombay in its case of **Iqbal Ahmed Kamaruddin V/s P. L. Muzumdar** reported in **1992 (64) FLR 827,** in para 8 of its Judgment has held as under:

> *"If what is referred to a tribunal/Labour Court is not an Industrial Dispute, it is always open to a Party to show to the forum that the dispute referred for adjudication though purported to be an Industrial Dispute, is in reality not an Industrial Dispute at all. This has always been recognized as an exception to the general rule postulated in section 10 (4). It is therefore always permissible for an Employer to raise an issue as to whether what has been referred is an Industrial Dispute at all and there can be no question of the Tribunal being bound by the order of reference. It is a settled law that the appropriate Government makes a reference upon the prima facie view of the matter as to the existence or apprehension of the Industrial Dispute. It is open to the Parties to show that what is referred is not in reality an Industrial Dispute at all".*

17. The Hon'ble Calcutta High Court in its case of **Deepak Industries Ltd., and Anr. V/s State of West Bengal reported in 1975 Lab. I. C. 1153** has held that *"mere negotiations by some officials of the union with the Employers for conciliations or executing certain documents on behalf of the Workman prior to reference are not conclusive proof of the authority of the Union, to represent the workman whose dispute it is espousing before the Tribunal".*

18. The principle laid down by the Bombay High Court and the Calcutta High Court in the above referred cases therefore makes it clear that the Employer is entitled to raise an objection that the dispute referred is not an Industrial Dispute, even after the reference is made by the Government and the mere fact that the Employer participated in the conciliation proceedings or did not raise any objection during the conciliation proceedings, does not debar the Employer from raising the objection before the Tribunal in a reference that the Union has no locus standi to raise the dispute and hence there is no Industrial Dispute.

19. Section 36 of the I.D. Act, 1947 deals with representation of parties and it reads as under:

*"36 Representation of parties-(1) A workman who is a party to a dispute shall be entitled to be represented in any proceedings under this Act by-*

*(a) any member of the executive or other office bearer of a registered trade unions to which he is a member;*

*(b) any member of the executive or other office bearer of a federation of the trade union to which the trade union referred to in clause (a) is affiliated;*

*(c) where the worker is not a member of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.*

*2. (a) ……"*

Thus, a workman who is a party to the dispute shall be entitled to be represented in any proceedings under this Act by any member of the executive or other office bearer of a registered trade union **of which he is a member** or any member of the executive or other office bearer of a federation of a trade union is affiliated and that if a workman is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

20. Now it is to be seen whether the reference is maintainable because there is an Industrial Dispute and that whether the Union namely the Gomantak Mazdoor Sangh Union has locus standi to raise the present dispute on behalf of the workmen as contended by the Employer.

21. After the introduction of section 2-A to the Industrial Dispute Act, 1947, an individual dispute as contemplated under the said section is deemed to be an Industrial dispute within the meaning of the said Act. Section 2-A contemplates individual dispute as an Industrial Dispute when a workman is discharge, dismissed, retrenched or his services are terminated by the Employer. The Dispute involved in the present case is as regards termination of the services of all the 109 workmen.

If the dispute was raised by all or any of the 109 persons named in the order of reference individually or collectively it would be deemed to be an industrial disputes. However, if the dispute is raised by the Union and the Employer challenged its authority to raise the dispute, the Union must prove its authority by producing some material evidence before the Labour Court.

22. In the case in hand, upon careful perusal of the records of the present case, it appears that none of the persons named in the order of reference have engaged the union who is claiming to represent all the 109 persons named in the order of reference. The memo of representation has been signed by Shri Puti Gaonkar claiming to be a General Secretary of the said union. The said Shri Puti Gaonkar, is neither a person named in the present order of reference nor was he employed by the Employer. No cogent evidence has been produced on record to prove that all the 109 persons named in the order of reference are/were the members of the Gomantak Mazdoor Sangh Union. There is no material evidence on record to prove that any of the persons named in the present order of reference have authorized the union, who is claiming to represent all the 109 persons named in the present order of reference. It appears that the statement of claim as well as Re-joinder has been filed by Shri Puti Gaonkar, claiming to be General Secretary of the said Union without producing its authorization. As any or all the 109 persons named in the order of reference have not authorized the said union claiming to represent them, the pleadings signed by him as well as his oral evidence on record cannot be considered since it does not legally bind the persons named in the order of reference. None of the witnesses examined by the union has produced on record any document to prove that any or all the 109 persons named in the order of reference have joined the Gomantak Mazdoor Sangh Union or that they are the members of the said union. The union also failed to produce on record any document to prove that any resolution was passed by them to authorize them to espouse the dispute pertaining to the non-employment of any or all the persons named in the present order of reference. In the circumstances, it is held that the union namely Gomantak Mazdoor Sangh has failed to prove its authority/locus standi to represent any or all the 109 persons named in the present order of reference.

23. Ld. Adv. Shri M.S. Bandodkar, representing the Employer has relied upon a judgment of Hon'ble High Court of Calcutta in its case of **Deepak Industries Ltd. (Supra).** In Para 7 of the Judgment, the Hon'ble High Court of Calcutta held as follows:-

> *"7..... The amended Sec. 2A makes it clear that when an individual dispute is not sponsored by other Workman or espoused by the Union of the Workman, even then, it would be deemed to be an industrial dispute within the meaning of the Act. In spite of the said amendment which brings in individual disputes within the scope of the Act, it has not made any difference on the principles as to what would constitute an industrial dispute within the meaning of the Industrial Disputes Act. If it is an industrial dispute within the meaning of the Industrial Disputes Act. If it is an industrial dispute, that is a dispute raised by an individual, it must be raised by him and the reference may be in due course for adjudication under the said Act. On the other hand, if a group of Workmen raise a dispute that can also constitute an industrial dispute within the meaning of the Act, which may be referred to the tribunal in due course. But, when the dispute is espoused or sponsored by an Union, it seems to have been uniformly held by the judicial decisions which has been referred to by the parties and mentioned hereinbefore that when the authority of the Union is challenged by the Employer, it must be proved by the production of material evidence before the tribunal to which such a dispute has been referred the Union has been duly authorized either by a resolution of its member or otherwise that it has the authority to represent the Workman whose cause it is espousing. Mere fact that the said Union is registered under The Indian Trade Union Act is not conclusive proof of its real existence or the authority to represent the Workman in the reference before the Tribunal……..."*

> *"……. It is immaterial whether the said Union is a general Union of the workman of a particular industry or it is a Union of the particular establishment relating to which the dispute has arisen between it and its Workmen. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of the reference, the dispute was taken up or supported by the Union of the workman of the employer against whom the dispute is raised by an individual workman or by an appreciable number of Workman".*

The facts of the case are totally different than the case in hand, hence, the principle laid down by the Hon'ble High Court of Calcutta is not applicable to the case in hand.

24. Ld. Adv. Shri S. Gaonkar, representing the union also relied upon a judgment in the case of **Maharashtra General Kamgar Union (supra),** of the Hon'ble High Court of Bombay. In the said case, the Respondent dismissed 96 workmen. The Petitioner Union, which is not recognized union, espoused the case of the said individual workman and Government made a single reference in respect of all the said 96 workmen. Labour Court dismissed the reference on the ground that Petitioner union had no right to espouse the cause of workmen in respect of whom reference was made. In a writ petition, the Hon'ble High Court set aside the order of the Labour Court rejecting the reference by observing that the reference would be maintainable as long as dispute falls within section 2-A of the Act and it would be immaterial whether dispute on behalf of individual workman is espoused by a recognized union or substantial number of workmen in the industry.

The facts of the aforesaid case are totally different than the case in hand. Hence, the principle laid down by the Hon'ble High Court Bombay is not applicable to the case in hand.

In the light of what is discussed above, I am of the view that the union has failed to prove its authority to espouse the dispute of non--employment of any or all the 109 persons named in the present order of reference. It is therefore held that the union namely Gomantak Mazdoor Sangh Union has failed to prove that it has locus standi to represent any or all the 109 persons named in the present order of reference. The reference made by the Government is bad-in-law and not maintainable. The issue No. 3 is answered in the affirmative and issue No. 3-A is answered in the affirmative.

25. *Issue No. 1 and 1-A and 2:*

While deciding the issue No. 3-A, hereinabove, I have discussed and come to the conclusion that the union has no locus standi to represent all or any of the 109 persons named in the present order of reference and as such the reference is bad-in--law and not maintainable.

Therefore, the question of answering the issue No. 1-A and 2 as to whether the union proves that there exist any employer-employee relationship between the Employer and the said 109 persons named in the order of reference and/or that all the 109 persons named in the order of reference are workman as defined u/s 2 (s) of the I.D. Act, 1947 and/or whether the action of the management of the Employer in refusing employment to all the 109 workmen named in the order of reference w.e.f. 19-10-2004 is illegal and unjustified, does not arise. The issue No. 1, 1-A and 2 are therefore answered accordingly.

26. *Issue No. 4:*

While deciding the issue No. 3-A, I have discussed and come to the conclusion that the Gomantak Mazdoor Sangh Union has no locus standi to espouse the present dispute and as such the reference is bad in law and not maintainable. All the 109 persons named in the order of reference are therefore not entitled to any relief. The issue No. 4 is therefore answered in the negative.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the union namely Gomantak Mazdoor Sangh has no authority/locus standi to espouse the dispute of all the 109 persons named in the preset order of reference.
2. It is held that the dispute as to whether the said 109 workmen of M/s. Glenmark Laboratories Private Limited, Verna Industrial Estate, Verna, Goa, are "workman" as defined under Clause (s) of Section (2) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), does not survive.
3. It is further held that the dispute as to whether the action of the management of M/s. Glenmark Laboratories Private Limited, Verna, Goa, in refusing employment to the said 109 workmen, with effect from 19-10-2004, is legal and justified, also does not survive.
4. It is held that all the 109 persons named hereinabove in the order of reference are not entitled to any relief.
2. No Order as to Cost.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

## Department of Mines

### Directorate of Mines & Geology

—

**Order**

No. DMG/MMDR/DMF/01/2015/6124

Read: Notification No. DMG/MMDR/DMF/01/2015 dated 30th November, 2017.

In partial modification to Notification read above, Government of Goa is pleased to appoint Dy. Director of Mines and Geology-II as Member Secretary for District Mineral Foundation Committee for South Goa District and Dy. Director of Mines and Geology-I as Member Secretary for District Mineral Foundation Committee for North Goa District in place of Shri Prasanna Acharya, Director of Mines and Geology with immediate effect.

By order and in the name of the Governor of Goa.

*Prasanna A. Acharya,* Director/Additional Secretary (Mines and Geology).

Panaji, 20th August, 2018.

———◆◆◆———

## Department of Urban Development

### Goa Real Estate Regulatory Authority

—

**Order**

No. 1/RERA/Appointment of PIO/2018/189

The following Official of the Goa Real Estate Regulatory Authority is appointed as the First Appellate Authority to act as official under Section (19) of the Right to Information Act, 2005.

| Sr. No. | Name of the official | Designation | Office Telephone No. |
|---|---|---|---|
| 1. | R. Menaka, IAS, Director, Urban Development | First Appellate Authority | 0832-2437655 |

*Sudhir Mahajan,* IAS, Secretary (Urban Development).

Panaji, 13th August, 2018.

## Department of Women & Child Development

### Directorate of Women & Child Development

—

**Notification**

No. 2-993-Widows'Cell-2018-DW&CD/5287

In pursuance of the recommendations made by the Expert Committee constituted under the direction of the Hon'ble Supreme Court of India vide Judgement dated 11-08-2017 in WP(Civil) No. 659/2007 filed by Environmental & Consumer Protection Foundation Vs. Union of India & Others, the Government of Goa hereby constitutes the State Level Monitoring Committee.

1. Member Secretary, State Legal Service Authority, Panaji — Member.
2. Secretary, Department of Women & Child Development, Secretariat, Porvorim — Member.
3. Secretary, Department of Social Welfare, Secretariat, Porvorim — Member.
4. Chairperson, Goa State Social Welfare Board, Mala, Panaji — Member.
5. Chairperson, State Commission for Women, Panaji — Member.
6. Director, Women & Child Development, Panaji — Member Secretary.

The State Monitoring Committee shall conduct annual inspection of shelter homes to review the implementation of schemes pertaining to widows. The above constituted Committee shall review the report of District Monitoring Committee and take appropriate action.

The tenure of the Monitoring Committees will be for a period of 3 years from the date of issue of this notification.

The non-official members shall be paid visiting fee including TA/DA per day of the inspection.

This Order shall supersede Order No. 2-993--Widows'Cell-2018-DW&CD/3281 dated 09-07-2018.

This notification is issued with the approval of the Government vide U.O. No. 437/F dated 22-06-2018.

By order and in the name of the Governor of Goa.

*Dipak Desai,* Director & ex officio Joint Secretary (Women & Child Development).

Panaji, 16th August, 2018.

www.goaprintingpress.gov.in

Published and Printed by the Director, Printing & Stationery,
Government Printing Press,
Mahatma Gandhi Road, Panaji-Goa 403 001.

**PRICE–Rs. 28.00**



PRINTED AT THE GOVERNMENT PRINTING PRESS, PANAJI-GOA—160/150–08/2018.